

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION**

IN RE REGIONS MORGAN KEEGAN
SECURITIES, DERIVATIVE and ERISA
LITIGATION

MDL Docket No. 2009

This Document Relates to:

*Landers v. Morgan Asset Management,
Inc.*, No. 2:08-cv-02260-SMH-dvk

**REGIONS' REPLY MEMORANDUM
IN FURTHER SUPPORT OF ITS MOTION TO DISMISS**

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Regions Financial Corporation (“Regions”) respectfully submits this reply memorandum of law in further support of its motion to dismiss this purported derivative action.

Plaintiffs, shareholders in three investment funds (the “Funds”) offered by Morgan Keegan Select Fund, Inc. (“MK Select”), propose to bring this action derivatively on behalf of MK Select and the Funds. As demonstrated in the reply memorandum filed by Morgan Keegan & Company, Inc., Morgan Asset Management, Inc. and MK Holding, Inc. (“MK Defendants”), incorporated herein by reference, the Complaint should be dismissed on two independent grounds: (1) Plaintiffs have represented that they have made demand on the new directors of Helios Select Fund, Inc. (formerly known as MK Select Fund, Inc.) regarding the claims in this lawsuit; and (2) Plaintiffs concede that they did not make demand on the directors in place at the time this suit was filed and, under Maryland law (which applies here), it is clear that demand was not excused.

First, because Plaintiffs represent that they have now made demand on the current board of directors of the fund regarding the claims at issue in this case (Pls.’ Opp. at 5-6), Plaintiffs are no longer entitled to pursue these same claims on behalf of the nominal defendant. Once demand is made, the decision whether to litigate the claims “rests solely on the business judgment of [those] directors.” *Kamen v. Kemper Financial Servs., Inc.*, 500 U.S. 90, 103 (1991).

Second, Plaintiffs concede that they failed to make demand on the board of directors in place at the time this suit was filed. (Pls.’ Opp. 6-7.) As discussed more fully in MK Defendants’ reply, the conclusory allegations in the Complaint fail to meet the stringent standard to excuse demand laid down by Maryland’s highest court in *Werbowsky v. Collomb*, 766 A.2d 123 (Md. 2001). This is also fatal to Plaintiffs’ claims.

Accordingly, for all the reasons set forth herein and in the memoranda of the MK Defendants, the Complaint should be dismissed with prejudice.

Dated: September 18, 2009

Respectfully Submitted,

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Certificate of Service

I hereby certify that I electronically filed the above and foregoing Motion using the CM/ECF system this the 18th day of September, 2009, and that the CM/ECF system will provide electronic notice of such filing to all parties as follows:

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